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SEP 30 2005

In re Application of	:	OFFICE OF PETITIONS
Dennis, et al.	:	DECISION ON APPLICATION
Application No. 09/978,344	:	FOR PATENT TERM
Filed: October 16, 2001	:	ADJUSTMENT
Atty. Dkt. No.: 11509/8	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(b)" filed June 27, 2005.

The application for patent term adjustment ("PTA") under 37 C.F.R. § 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN.**

Applicants request that the Determination of Patent Term Adjustment be corrected from zero days, as indicated on the Determination of Patent Term Adjustment mailed April 7, 2005, to an adjustment of 663 days.

The correct adjustment at the time of Notice of Allowance is 490 days. The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance and Issue Fee Due reflects an adjustment of 490 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

In accordance with 37 C.F.R. § 1.702(a)(1), an adjustment of 550 days can be attributed to the Office¹.

The Office errantly entered September 8, 2003 as the date a proper response to the Notice to File Missing Parts, mailed November 19, 2001, rather than February 12, 2002, the date a response was in fact submitted.

¹ In accordance with 37 C.F.R. § 1.703(a)(1), the adjustment began December 17, 2002, the day after the date that is fourteen months after the date on which the application was filed, and ended June 18, 2004, the date the restriction requirement was mailed.

Accordingly, the adjustment of 550 days is reduced 34 days in accordance with 37 C.F.R. § 1.704(c)(7)².

The adjustment of 550 days is further reduced two days in accordance with 37 C.F.R. 1.704(b)³.

The adjustment of 550 days is further reduced 24 days in accordance with 37 C.F.R. § 1.704(c)(7)⁴.

The instant application for patent term adjustment also requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date. A decision as to the period of adjustment under 37 C.F.R. § 1.704(b) is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within 3 years. See, 37 CFR 1.703(b).

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Applicants are reminded that if an application is entitled to an adjustment under 35 USC 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 USC 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 USC

² On March 12, 2002, a Notice of Incomplete Reply was mailed March 12, 2002 requiring submission of an abstract. The period of time for reply remained as set forth in the Notice to File Missing Parts. Accordingly, the reduction under 37 CFR 1.704(c)(7) began February 13, 2002, the day after the date that the initial response to the Notice to File Missing Parts was submitted, and ended March 18, 2002, the date the paper correcting the omission was filed.

³ The adjustment began January 6, 2005, the day after the date that is three months after the date that the non-final Office action was mailed, and ended January 7, 2005, the date a response was filed.

⁴ The adjustment began January 8, 2005, the day after the date that the initial non-compliant amendment was filed, and ended January 31, 2005, the date the paper correction the omission was filed.

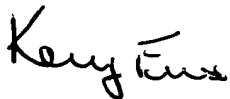
154(b)(1)(B) in determining whether periods of delay overlap under 35 USC 154(b)(2)(A).

Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See, 35 USC 154(b)(1)(B), 35 USC 154(b)(2)(A), and 37 CFR § 1.703(f). See, also, *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

Accordingly, the period of patent term adjustment as of the date of mailing of the Notice of Allowance is 490 days.

The application file is being forwarded to the Publications Division for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.



Kery Fries
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Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation